



OFFICE OF THE CITY CLERK

REPORT

REPORT TO THE COMMITTEE ON RULES, FINANCE AND INTERGOVERNMENTAL RELATIONS

DATE: May 30, 2003

REPORT NO.: 03-04

SUBJECT: PROPOSED AMENDMENTS TO SAN DIEGO MUNICIPAL CODE
RELATED TO ELECTIONS, CHAPTER 2, ARTICLE 7

ISSUE

In 1999 the City Council approved major amendments to the City's Elections Code. In administering the revised code, certain issues have been raised related to candidate ballots. The City Clerk has determined that amendments are needed to address the issues that have been identified.

RECOMMENDATION

Adopt the proposed amendments to the City's Election Code, Chapter 2, Article 7 of the San Diego Municipal Code.

DISCUSSION

Two amendments are being proposed in Division 6 (Ballots for Candidates). These are housekeeping amendments and strike-out language is included as Attachment A. Specifically, the proposed amendments are as follows:

1. Section 27.0621 (Certain Content Prohibited in Statement of Qualifications) has been amended to delete subsections (d) and (f) based on a court decision to strike similar language in the state elections code as being unconstitutional. Subsection (d) of Section 27.0621 states, "The statement of qualifications shall not contain language which is prohibited by law to be sent through the mail." Subsection (f) of the same section states, "The statement of qualifications shall not contain obscene, vulgar, profane, scandalous, libelous or defamatory matter or language which in any way incites, counsels, promotes or advocates hatred, abuse, violence or hostility toward any individual or group of individuals by reason of race, color, religion or manner of worship."

It was recently brought to our attention that in *Loza v. Panish*, 102 Cal. App.3d821, a California appellate court ruled that similar language in the state elections code was unconstitutional because it violated federal and state rights of free expression. In striking down the language, the court cited several United States Supreme Court cases which held that the government cannot suppress or censor statements because they are believed to be untrue or defamatory. Based on the existence of the *Loza* decision, the City Attorney's Office has advised us that these sections are vulnerable to a legal challenge and should be repealed.

2. Section 27.0622 (Notification to Candidate if Statement of Qualifications Violates Restrictions) has been amended to delete subsection (b). This subsection provides a candidate with the opportunity to provide alternate language to the City Clerk if the Clerk strikes language in the statement found to be in violation of restrictions set forth in Section 27.0620 and Section 27.0621. The proposed amendment also deletes subsection (c), which is not necessary if subsection (b) is deleted.

Once the filing deadline has passed, candidates' statements of qualifications--submitted for inclusion in the sample ballot--become public record. Concern has been raised that a wily candidate might specifically draft and file a statement which violates Municipal Code provisions. Consequently, the language would be struck by the Clerk, and the candidate would have three days to provide alternate language *once he or she has been able to view opponents' statements*. The alternate language could be drafted based on the content of those other statements, thus providing the candidate with an unfair advantage.

In the amendment to Section 27.0622, the Clerk proposes simply to strike the language which violates Municipal Code provisions; no opportunity to substitute alternate language would be allowed. Consequently, struck language could be replaced only by authorization of a court of law. This procedure is consistent with procedures in other jurisdictions, including the County of San Diego.

SUMMARY

In summary, the City Clerk proposes these amendments to Chapter 2, Article 7, Division 6 of the San Diego Municipal Code. Should you have questions or comments, please contact Assistant City Clerk Joyce Lane at 533-4081.

Sincerely,



Charles G. Abdelnour
City Clerk

CGA:JL
Attachments

Division 6: Ballots for Candidates

§27.0621 Certain Content Prohibited in Statement of Qualifications

- (a) The statement of qualifications shall not refer, either directly by name, or indirectly by title or description to any other *candidate* or officeholder or to any other *candidate's* or officeholder's qualifications, character or activities, unless such reference is authorized pursuant to Section 27.0620(d).
- (b) The statement of qualifications shall not refer, either directly by name, or indirectly by title or description to any City employee or to a City employee's character or activities unless such reference is authorized pursuant to Section 27.0620(d).
- (c) The statement of qualifications shall not include the party affiliation of the *candidate* or membership or activity in partisan political organizations.
- ~~(d) The statement of qualifications shall not contain language which is prohibited by law to be sent through the mail.~~
- ~~(e)(d)~~ The statement of qualifications shall not contain matter that is unrelated to the *candidate*.
- ~~(f) The statement of qualifications shall not contain obscene, vulgar, profane, scandalous, libelous or defamatory matter or language which in any way incites, counsels, promotes or advocates hatred, abuse, violence or hostility toward any individual or group of individuals by reason of race, color, religion or manner of worship.~~

§27.0622 ~~Notification to Candidate~~ Clerk to Strike Language if Statement of Qualifications Violates Restrictions

- (a) The City *Clerk* has no duty to verify the statement of qualifications. If, however, after reviewing the nomination papers, the City *Clerk* finds a portion of the statement of qualifications to be in violation of any of the restrictions set forth in Section 27.0620 or Section 27.0621, the City *Clerk* shall strike the language in violation of those restrictions. notify the candidate.
- ~~(b) The candidate may, within three business days from the date of such notice, provide an alternate statement to the City Clerk.~~
- ~~(c) In the event the candidate fails to provide alternate language, the statement of qualifications shall appear in the voter pamphlet as amended by the City Clerk to delete those portions of the statement that are in violation.~~